Ormet Aluminum Mill Products Corporation *and* United Steelworkers of America, Local Union 5760, AFL–CIO, CLC

Ormet Primary Aluminum Corporation[1] ***and*** **United Steelworkers of America, Local Union 5724, AFL–CIO, CLC.** Cases 8–CA–28811 and 8–CA–30299

August 27, 2001

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS TRUESDALE AND WALSH

On June 24, 1999, Administrative Law Judge Eric M. Fine issued the attached decision. The Respondent filed exceptions with a supporting brief and the General Counsel filed cross-exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings, and conclusions, and to adopt the recommended Order.[2]

Our dissenting colleague joins us in adopting the judge's findings that Ormet Aluminum Mill Products Corporation (Ormet Mill) and Ormet Primary Aluminum Products Corporation (Ormet Primary) constitute a single employer (the Respondent) and that the Respondent violated Section 8(a)(5) and (1) of the Act through Ormet Mill's failure to furnish certain information to Steelworkers Local Union 5760 and the Steelworkers International Union.[3] Our colleague, however, does not join us in adopting the judge's further finding that the Respondent also violated Section 8(a)(5) and (1) through Ormet Primary's failure to furnish Steelworkers Local Union 5724 and the Steelworkers International Union (the Union) information the Union requested in its August 28, 1998 letter and attached questionnaires relating to certain contracting out notifications. Citing *California Nurses Assn.,* 326 NLRB 1362 (1998), for the proposition that "Section 8(a)(5) is not to be used as a device to secure pre-trial discovery in arbitration proceedings," our colleague claims that by its August 28, 1998 information request, the Union is seeking "to draw the Board into what is, in effect, pretrial discovery" and that therefore these 8(a)(5) allegations must be dismissed. We disagree.

The facts, in brief, are as follows. In response to certain contracting out notifications, the Union filed eight grievances between April 6 and August 17, 1998.[4] Under the terms of the parties' collective-bargaining agreement, the grievances were filed at the third step of the grievance procedure. The Union then filed eight information requests. When the Respondent refused to furnish the requested information because it objected, inter alia, to the "canned questionnaires," the Union submitted to the Respondent the information request at issue here, its August 28 letter with nine attached questionnaires which narrowed the scope of the information requested (GC Exh. 30).[5] The questionnaires requested identical information:[6]

> 1. Was consideration given to any of the qualified employees? Did the Company attempt to utilize plant forces? If so, how?
>
> 3. The Union requests a copy of the agreement signed by the subcontractor and the Company.
>
> 6. If it is your claim that this work is being contracted out because of special equipment involved, describe it.

[1] The case caption is amended to reflect the correct name of the Respondent.

[2] In his cross-exceptions, the General Counsel excepts to certain inadvertent errors in the judge's notices. The attached corrected notices are substituted for those of the administrative law judge.

[3] The Respondent excepts, inter alia, to the judge's statement, at sec. II,B, last paragraph, of his decision, that the Respondent had contended at the hearing that the "Type A" pallets were made under the old collective-bargaining agreement between Ormet Mill and the Union (here, Local Union 5760 and the Steelworkers International Union), but were brought into the plant on January 2, 1997, under the terms of their new collective-bargaining agreement. We find merit in this exception to the extent that we agree with the Respondent that it did not contend at the hearing that it relied on any contractual language to bring the "Type A" pallets into the plant. Rather, the Respondent contended at the hearing that Respondent Ormet Mill relied on certain "shelf item" language in art. 39 of the new collective-bargaining agreement to bring the "Type B" pallets into the plant beginning in mid-January 1997. This inadvertent error, however, does not affect the result here because the judge subsequently, at sec. III,A, third paragraph, of his decision, accurately set out the Respondent's contentions and it was on this basis that he analyzed the issue presented. Finally, we note that the issue here is whether the Respondent violated Sec. 8(a)(5) of the Act by failing to provide the Union information it requested so that it could verify, inter alia, the truth of the Respondent's contentions, no matter what they were, regarding its decisions to contract out the pallet work. We agree with the judge, for the reasons stated by him, that the Respondent violated the Act by failing to provide this information.

[4] All dates hereafter refer to 1998.

[5] In addition to the eight original information requests set out in the consolidated complaint, the Union's August 28 information request included a questionnaire concerning another contracting out notification, notification 98–23. At fn. 10 and accompanying text of his decision, the judge found that the issue of whether the Respondent's refusal to furnish the information requested in this questionnaire had been fully litigated and that the Respondent had violated Sec. 8(a)(5) by refusing to supply the requested information.

[6] However, the questionnaires relating to contracting out notifications 98–11, 98–12, 98–16, and 98–17 did not request item 13, a copy of the engineering estimate, because that item was not relevant to those contracting out notifications.

7. If it is your claim that this work is being contracted out because of special skills involved, describe them.

8. A breakdown of the crafts involved, using bargaining unit craft designations.

9. A description of the anticipated utilization of bargaining unit forces during the period this work will be performed.

13. The Union requests a copy of the engineering estimate.

14. If it is your claim that this work is being contracted out because of manpower, give us the amount of men working each shift and classifications.

The Respondent, however, still refused to furnish the requested information. Subsequently, the Respondent denied the grievances and the grievances were then referred to arbitration.

The judge found, in effect, that the requested information was necessary for the effective administration of the grievance procedure and that therefore the Respondent violated Section 8(a)(5) by refusing to furnish the requested information.

Although the Respondent never raised this "defense" at the hearing, our dissenting colleague now asserts that the 8(a)(5) allegations relating to Ormet Primary should be dismissed because the grievances are now pending arbitration. He argues that we should find no 8(a)(5) violation because, as noted above, he asserts that Section 8(a)(5) should not be a vehicle for pretrial discovery at arbitration. He also asserts, in effect, that now that the grievances have been referred to arbitration, it would be more expedient to allow the arbitrator to resolve the information requests. We find our colleague's arguments without merit for the following reasons.

First, we reject our dissenting colleague's assertion that the information requests are in the nature of pretrial discovery because the grievances have been referred to arbitration. The simple fact is that the Union made the information requests at the third step of the grievance procedure and, obviously, before the grievances had been denied and referred to arbitration. Thus, since the grievances were not pending arbitration when the Union made its information requests, it cannot be said that the Union is, in effect, seeking pretrial discovery through them—and our dissenting colleague's labeling the information requests as "interrogatories" does not make it otherwise. Simply put, the Respondent was obligated to furnish the requested information to the Union at the third step of the grievance procedure and, as the judge found, it violated Section 8(a)(5) by refusing to provide the requested information.

In arguing otherwise, our dissenting colleague would simply make the arbitration procedure a "safe harbor" for parties that unlawfully refuse to furnish requested information during the grievance process. For he would find, in effect, that an unlawful refusal to furnish information during the processing of a grievance is transformed into a lawful refusal to respond to "interrogatories" at arbitration. In the present case, he would find that the transformation from information requests to interrogatories is "especially true as to items 1, 6, 7, and 14" because, he reasons, "[t]hese questions do not seek documents but rather reasons for the Respondent's actions." We find these assertions without merit for the following reasons.

Article XXX, the contracting out provision of the parties' collective-bargaining agreement, provides, inter alia, that a contracting out notice:

> shall generally contain the information set forth below:
>
> A. Location of Work
> B. Type of Work:
> (1) Service
> (2) Maintenance
> (3) Major rebuilds
> (4) New construction
> C. Description of Work:
> (1) Crafts involved
> (2) Special equipment
> (3) Special skills
> (4) Warranty work
> D. Estimated duration of work.
> E. Anticipated utilization of bargaining unit forces during the period.
> F. Effect on operations if work not completed in timely fashion.

Article XXX goes on to state that "[t]he intent to contract out shall be discussed with the Union within five (5) days . . . after receipt of the written notice" and that "[a]t such meeting, the parties should review in detail the plans for the work to be performed and the reasons for the Company's intention to contract out such work."

Thus, it is clear that many of the items requested by the Union in its questionnaires, including specifically items 1, 6, and 7, were items which the Respondent had undertaken to provide to the Union under article XXX. Further, while, as our dissenting colleague states, items 1, 6, 7, and 14, do seek "reasons" for the contracting out, such reasons are, again, precisely what the Respondent undertook to provide to the Union under article XXX, which provides, as set out above, that the parties should review, inter alia, "the reasons for the Company's intention to contract such work." Thus, to assert, as our dis-

senting colleague apparently does, that the Union's contractual right to receive the requested information terminates when the grievances are pending arbitration is to assert that the Respondent's obligation to furnish the requested information ends when it denies the grievance. The absurdity of the result reveals the fallacy of our colleague's argument.

In any event, we further find that the information sought by the Union is not the type of information which the Board has found that a party may lawfully refuse to furnish because it involves, in effect, pretrial discovery prior to arbitration. For example, in *California Nurses Assn.,* supra, a case relied on by our dissenting colleague, the Board found no 8(b)(3) violation when the respondent union refused to furnish to the employer the names of witnesses it intended to call, and the evidence on which it intended to rely, at the arbitration hearing. By contrast, in the present case, the Union did not specifically request information for use at the arbitration, but rather it requested information which the judge found was relevant and necessary to the effective administration of the grievance procedure in general—and which the Respondent had undertaken generally to supply to the Union under article XXX. Indeed, by agreeing to supply such information under article XXX, it is apparent that the Respondent also believed that such information was relevant and necessary to the effective understanding of the contracting out notices and, ultimately, to the processing of any grievances that might be filed as to them.

Second, and again ignoring the fact that the information requests at issue here were made at the third step of the grievance procedure, our colleague asserts that, the grievances having been referred to arbitration, it would be more expedient to have the arbitrator resolve the information issues as well as the underlying grievance because, he asserts, his "approach . . . puts the two together and lodges them in one forum."

We reject our colleague's "approach" because it trivializes the duty to furnish information during the actual processing of a grievance and ignores the benefit to the grievance procedure derived from a party's prompt fulfillment of its obligation to furnish requested information. As the Supreme Court explained in *NLRB v. Acme Industrial Co.,* 385 U.S. 432, 438 (1967) (emphasis added):

> Arbitration can function properly only if the grievance procedures leading to it can sift out unmeritorious claims. For if all claims originally initiated as grievances had to be processed through to arbitration, the system would be woefully overburdened. . . . *It [respondent's refusal to give the union information relevant to grievances which had been filed] would force the union to take a grievance all the way through to arbitration without providing the opportunity to evaluate the merits of the claim.*

In sum, under the guise of pretrial discovery and expediency, our dissenting colleague would here compel the Union "to take [its] grievance[s] all the way through to arbitration without providing the opportunity to evaluate the merits of the claim[s]." For all the reasons set out above, we find our colleague's arguments without merit.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondents, Ormet Aluminum Mill Products Corporation, Hannibal, Ohio, and Ormet Primary Aluminum Corporation, Hannibal, Ohio, a single employer, their officers, agents, successors, and assigns, shall take the action set forth in the Order.

CHAIRMAN HURTGEN, dissenting in part.

Unlike my colleagues, I do not find that the Respondent's failure to furnish the information requested by Local 5724 was unlawful.

The Union filed eight information requests in the form of identical questionnaires pertaining to eight "contracting out" notifications that had been given to the Union by the Respondent. The Union filed grievances as to each of the notifications. The Respondent denied the grievances at the third step of the grievance procedure. At the time of the hearing, the grievances were still pending, waiting to be scheduled for arbitration. As to each grievance, the Union sought, inter alia, the following information:

> 1. Was consideration given to any of the qualified employees? Did the Company attempt to utilize plant forces? If so how?
>
> 3. The Union requests a copy of the agreement signed by the sub-contractor and the Company.
>
> 6. If it is your claim that this work is being contracted out because of special equipment involved, describe it.
>
> 7. If it is your claim that this work is being contracted out because of special skills involved, describe them.
>
> 8. A breakdown of the crafts involved, using bargaining unit craft designations.
>
> 9. A description of the anticipated utilization of bargaining unit forces during the period this work will be performed.
>
> 13. The Union requests a copy of the engineering estimate.
>
> 14. If it is your claim that this work is being contracted out because of manpower, give us the

amount of men working each shift and classifications.

The judge found that the General Counsel had met his burden of establishing the relevance of the requested information and that the information had not been provided to the Union. The judge also rejected the Respondent's contractual waiver argument. Accordingly, he found a violation. My colleagues affirm. I disagree.

In my view, the information sought by the Union amounts to a classic request for pretrial discovery. The Union is essentially asking the Respondent to set forth in writing its claims and the evidence for them. This is especially true as to items 1, 6, 7, and 14, supra. These questions do not seek documents but rather reasons for the Respondent's actions. These are essentially interrogatories, requiring the Respondent to *create* information in advance of the arbitration. Indeed, the Union continued to seek the information after it had already decided to go to arbitration. Thus, the Union seeks to draw the Board into what is, in effect, pretrial discovery.

Section 8(a)(5) is not to be used as a device to secure pretrial discovery in arbitration proceedings. *California Nurses Assn.,* 326 NLRB 1362 (1998), and cases cited therein. This position is consistent with the general rule that there is no pretrial discovery in arbitration proceedings.

An important reason for this rule against pretrial discovery in arbitration is that arbitration is intended to be a speedier, more efficient alternative to litigation. Thus, to allow prearbitral discovery would unduly clog the process, thereby defeating its purpose. Therefore, unless the arbitrator himself determines otherwise, the parties should adhere to these strictures. Nor should the Board, which itself eschews pretrial discovery, add more rules to the system. If a party desires prearbitral discovery, he should direct his request to the arbitrator, just as he would if he seeks evidence at the arbitral hearing itself.

There is yet another reason for leaving these matters to the arbitrator. As shown by the instant case, the "informational" issue itself often presents an issue of contract interpretation, in addition to the contractual issue that underlies the grievance on its merits. It seems prudent to have the arbitrator decide both issues, rather than have the NLRB decide the information issue and the arbitrator decide the grievance issue. If there are disputes about contract clauses governing information issues, it should be part and parcel of the arbitrator's role to resolve them. It is not sensible to have one forum (the Board) decide information issues and another forum (the arbitrator) decide the merits. I recognize that the Board refuses to "Collyerize"[1] information cases, because a party should not be required to first arbitrate the information issues and then the merits. My approach, however, puts the two together and lodges them in one forum.[2]

My colleagues state that the Union made the information requests at the third step of the grievance procedure. However, as noted above, the Union continued to seek the information after it had already decided to go to arbitration. To that extent, at least, the Union seeks prearbitral discovery, i.e., it seeks the information, not to decide whether to go to arbitration, but rather for use in arbitration.

Contrary to my colleagues, my approach does not trivialize the duty to furnish information (when such duty actually exists). Rather, I would seek to prevent the waste of the Board's time and resources.

My colleagues rely on article XXX of the contract. That provision sets forth the kinds of information that must be given if the Respondent has plans to contract out unit work. That information includes the reasons for contracting out. According to the Union, the Respondent failed to honor that provision. That is the basis for the Union's grievance. The grievance seeks the information. But, that does not mean that the information is relevant to the grievance. Rather, the information is applicable if the grievance has merit. The merit of the grievance is for an arbitrator to decide. If he decides that article XXX is applicable, he may well order that the information be supplied. To compel that the information be supplied prior to arbitration is to place the cart before the horse.

For the reasons set forth above, I would find no violation as to the Local 5724 request.[3]

APPENDIX A

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

[1] *Collyer Insulated Wire*, 192 NLRB 837 (1971).

[2] In *Staten Island University Hospital*, 334 NLRB 286 (2001), the information was supplied at the arbitration hearing. This led to a withdrawal of the NLRB case, but not before substantial time and money were spent on the NLRB litigation.

[3] The judge specifically found that, at the time of the hearing, the grievances pertaining to Local 5724's information requests were still pending and waiting to be scheduled for arbitration. He did not make such a finding as to the grievance pertaining to the information requests by Local 5760. I therefore join my colleagues in affirming the judge's finding that the Respondent unlawfully failed to comply with Local 5760's request. I also note that the Respondent raised its "waiver" defense in connection with the Local 5724 request, but not in connection with the Local 5760 request.

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail and refuse to provide the United Steelworkers of America, Local Union 5760, AFL–CIO, CLC, and the United Steelworkers of America, AFL–CIO, CLC, with information that is necessary for and relevant to their role as the exclusive collective-bargaining representative of our employees in the following appropriate unit:

All production and maintenance employees employed at Ormet Aluminum Mill Products Corporation's rolling mill facility located in Hannibal, Ohio, including all complex sniff operators, complex operators, furnace operator chargers, ingot saw operators, scrap crane operators, general utility servicemen, and cast house laborers, 80" mill operators, 96" mill operators, speed operators, assistant hot mill operators, ingot stockers, clad station operators, soaking furnace helpers, shearmen, sample utility men, power truck operators, hot mill laborers, SMS operators, cold mill operators, assistant SMS operators, utility men, assistant cold mill operators, furnace operators, expediters, cold mill feeders, material handlers, cold mill helpers and cold mill laborers, tension leveling line operators, HHS operators, TLL operators, utility men (relief), coil slitter operators, aging batch anneal furnace operators, high speed slitter assistants, set up men, coil slitter helpers, plate saw operators, embosser rewind scrap operators, stockers, overhead crane operators, plate saw helpers, finishing laborers, inspectors, stretch wrap operators, dock operators, box shop coordinators, packing clerks, metal suppliers, box shop assistants, finished goods stockers, sample coordinators, power truck operators, packers, IPS laborers, refridge and air conditioning repair employees, roll grinders, garage mechanics, industrial truck repairmen, building trades persons, roll builders, lube and coolant treatment operators, mold men, tool & storeroom attendants, battery repairmen, mobile equipment operators, checker-spot welders, shop helpers, general servicemen, maintenance laborers, those employed in trade and craft jobs (electrical repairmen, die makers, electricians, machinists, millwrights, brick masons, and welders), and all laboratory department employees (laboratory analysts #1, laboratory analysts #2 and laboratory laborers), but excluding all office clerical employees and all professional employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL furnish to United Steelworkers of America, Local Union 5760, AFL–CIO, CLC, and the United Steelworkers of America, AFL–CIO, CLC, in a timely fashion, the information requested in Local Union 5760's letters of January 9 and 10, 1997.

ORMET ALUMINUM MILL PRODUCTS CORPORA-TION AND ORMET PRIMARY ALUMINUM CORPORATION, A SINGLE EMPLOYER

APPENDIX B

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail and refuse to provide the United Steelworkers of America, Local Union 5724, AFL–CIO, CLC, and the United Steelworkers of America, AFL–CIO, CLC, with information that is necessary for and relevant to their role as the exclusive collective-bargaining representative of our employees in the following appropriate unit:

All production and maintenance employees employed at the Ormet Primary Aluminum Corporation facility in Hannibal, Ohio, including all production and maintenance employees employed in the carbon plant department, the cast house department, the electrical maintenance department, the sanitation department, the mechanical maintenance department, the rectifier depart-

ment, the reduction department, and the laboratory department, but excluding all office clerical employees and all professional employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL furnish to the United Steelworkers of America, Local Union 5724, AFL–CIO, CLC, and the United Steelworkers of America, AFL–CIO, CLC, in a timely fashion, the information requested in Local Union 5724's letter and attached questionnaires of August 28, 1998, pertaining to contracting out notifications 98–7, 98–8, 98–9, 98–11, 98–12, 98–16, 98–17, 98–19, and 98–23.

ORMET ALUMINUM MILL PRODUCTS CORPORA-TION AND ORMET PRIMARY ALUMINUM CORPORATION, A SINGLE EMPLOYER

Mark F. Neubecker, Esq., for the General Counsel.
Thomas A. Smock, Esq., of Pittsburgh, Pennsylvania, for the Respondents.
Gary Cochran, Staff Representative, of St. Clairsville, Ohio, for the Charging Parties.

DECISION

STATEMENT OF THE CASE

ERIC M. FINE, Administrative Law Judge. This case was tried in Bellaire, Ohio, on April 21 and 22, 1999. The charge in Case 8–CA–28811 was filed by United Steelworkers of America, Local Union 5760, AFL–CIO, CLC[1] on February 11, 1997. The charge in Case 8–CA–30299 was filed by United Steelworkers of America, Local Union 5724, AFL–CIO, CLC[2] on October 22, with amendments thereto filed on November 25 and on December 1, 1998. On January 28, 1999, the Regional Director for Region 8 issued an order consolidating cases, consolidated complaint, order revoking settlement, and notice of hearing. On February 2, 1999, the Acting Regional Director issued an amendment to order consolidating cases, consolidated complaint, order revoking settlement, and notice of hearing. The consolidated complaint alleges that Ormet Corporation, Ormet Aluminum Mill Products Corporation,[3] and Ormet Primary Aluminum Products Corporation[4] constitute a single-integrated business enterprise and a single employer within the meaning of the Act. It further alleges that Ormet Mill failed to comply with the terms of an informal settlement agreement, and that Ormet Mill and Ormet Primary have engaged in certain violations of Section 8(a)(1) and (5) of the National Labor Relations Act by refusing to provide requested information to the respective Local Unions.

[1] Referred to herein as Local 5760.
[2] Referred to herein as Local 5724.
[3] Referred to herein as Respondent or Ormet Mill.
[4] Referred to herein as Respondent or Ormet Primary.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and on behalf of the Respondents, I make the following

FINDINGS OF FACT

I. JURISDICTION

Ormet Corporation is a Delaware corporation with its principal office and place of business located in Wheeling, West Virginia. It is engaged in the manufacture of aluminum through various subsidiaries located throughout the United States. Ormet Mill and Ormet Primary are Delaware corporations, and are each wholly owned subsidiaries of Ormet Corporation. Ormet Mill is engaged in the manufacture of finished aluminum and operates a rolling mill. Ormet Primary operates an aluminum reduction facility. Ormet Mill and Ormet Primary are located in Hannibal, Ohio. They each sell and ship goods valued in excess of $50,000 directly to points located outside the State of Ohio. Ormet Mill and Ormet Primary admit, and I find, that they are each employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the United Steelworkers of America, AFL–CIO, CLC,[5] Local 5760 and Local 5724 are each labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background and Single-Employer Status

Ormet Mill and Ormet Primary are located in Hannibal, Ohio, and they are wholly owned subsidiaries of Ormet Corporation. Respondents admit that all three entities are affiliated business enterprises with varying degrees of common officers, ownership, directors, management, and supervision. Ormet Mill is a fabrication facility where primary metal is converted to ingot and then converted to a variety of products. Ormet Primary produces primary aluminum; it converts ore into molten or liquid metal, which in turn is converted to several forms, some of which are transported to Ormet Mill for processing. R. E. Boyle is the owner, president, and CEO of both Ormet Mill and Ormet Primary. Boyle is also a member of the board of directors of Ormet Corporation.

The Steelworkers and Local 5760 are the certified representative for an appropriate bargaining unit at Ormet Mill, and the Steelworkers and Local 5724 are the certified representative for an appropriate bargaining unit at Ormet Primary.[6] At the time of the hearing, there were separate collective-bargaining

[5] Referred to herein as the Steelworkers.

[6] It is alleged in the consolidated complaint and Respondents admit in their answer that the Steelworkers and the respective Local Unions are both the certified bargaining representatives for the designated bargaining unit. It is noted that the Ormet Primary collective-bargaining agreement is, by its terms, between the Steelworkers and Ormet Primary, and the Ormet Mill collective-bargaining agreement is, by its terms, between Ormet Mill and the Steelworkers on behalf of Local 5760. Officials from the Steelworkers and each of the appropriate Locals signed off on each of the respective contracts. Based on the forgoing, I have concluded that the consolidated complaint correctly alleges joint representational status by the Steelworkers and each of the respective Locals.

agreements for Ormet Mill and Ormet Primary, each with effective dates of May 31, 1996, through May 31, 1999. Gregory Driscoll is employed by Ormet Primary where he has been the corporate industrial relations director since December 1987. Driscoll also has corporate responsibilities for Ormet Mill, which include labor relations, industrial relations, workers' compensation, and related activities. Driscoll has labor relations responsibilities for several other Ormet facilities. Driscoll reports to Earl Schick, vice president of labor relations for Ormet Corporation. At the time of the hearing, Danny Isaly was manager of labor relations at Ormet Mill, a position that he had held since the fall of 1997. Isaly had previously been the manager of labor relations at Ormet Primary. There is no exchange of bargaining unit employees between Ormet Mill and Ormet Primary. Equipment is exchanged in emergency situations. Driscoll participated in the negotiation of the most recent collective-bargaining agreements for both Ormet Mill and Ormet Primary. Boyle, Schick, W.R. Smith, and Driscoll are signatory to both bargaining agreements. Driscoll's title is reflected in both contracts as director of labor relations.

There was new subcontracting language in article 39 of the Ormet Mill collective-bargaining agreement, which became effective in the May 31, 1996 contract. The article 39 language was the same language that had been incorporated in the Ormet Primary agreement in article 30 since 1990. Article 30 of the Ormet Primary agreement, which is identical to article 39 of the Ormet Mill agreement, provides, in pertinent part:

> 2. In determining whether work should be performed by the bargaining unit or be contracted out, the parties agree that it is in the best interests of the Company, the employees, and the Union to utilize the bargaining unit to the greatest extent possible when they are capable of performing the available work. Accordingly, the Company agrees that preference shall be given to the Production and Maintenance employees where practicable. Within this overall guideline, among the factors to be considered when determining whether work should be contracted out are the following:
>
> A. Production, service and day-to-day maintenance and repair work which has normally been performed by the bargaining unit will not be contracted out unless agreed to mutually.
>
> C. Whether the Company has the required expertise, equipment, or necessary supervision, is a factor to be considered in determining whether the involved work may be contracted out.
>
> E. Notwithstanding the above, the Union recognized that as part of the Company's normal business, it may purchase standard components or parts or supply items, produced for sale generally ("shelf items"). No item shall be deemed a standard component or part or supply item if its fabrication requires the use of prints, sketches or manufacturing instructions supplied by the Company or at its behest or it is otherwise made according to Company specifications.
>
> 3. Before the company finally decides to contract out work, the union will be notified. Such notice will be given in advance of the final decision to contract out the work except where emergency requirements prevent such timely notice. Such notice shall be in writing and shall be sufficient to advise the Union of the location, type, scope, duration and timetable of the work to be performed so that the Union can adequately make a decision on the involved contracting out matter. In the event emergency requirements prevent such timely notice, the Company will contact the Union as soon as practicable and orally inform the Union generally of the involved situation. Such notice shall generally contain the information set forth below:
>
> A. Location of work
>
> B. Type of work: (1) Service (2) Maintenance (3) Major Rebuilds (4) New Construction
>
> C. Description of Work: (1) Crafts involved (2) Special Equipment (3) Special Skills (4) Warranty Work.
>
> D. Estimated duration of work.
>
> E. Anticipated utilization of bargaining unit forces during the period.
>
> F. Effect on operations if work not completed in timely fashion.
>
> The intent to contract out shall be discussed with the Union within five (5) days . . . after receipt of the written notice. At such meeting, the parties should review in detail the plans for the work to be performed and the reasons for the Company's intention to contract out such work. The Company will give full consideration to any comments or suggestions by the Union and to any alternate plans proposed by the Union for the performance of the work by bargaining unit personnel. Except in emergency situations, such discussions shall take place before any final decision is made as to whether such work will be cont(r)acted out. Should the parties resolve the matter, such resolution shall be final and binding
>
> . . . .
>
> Where a discussion is held and the matter is not resolved, then within ten days from the date of the Company's notice, a complaint relating to such matter may be initiated under the grievance procedure. Should the Company fail to give notice as provided above, then not later than ten days from the date of the commencement of the work, a grievance relating to such matter may be initiated under the grievance procedure.
>
> In the event the Company is found in the grievance and arbitration procedure to have violated the notification requirements of these contracting out provisions and, that the failure to notify was not due to an emergency requirement, an appropriate remedy may be awarded, including, including earnings at straight time and/or overtime, to employees that would have performed the work, distributed equally to

all employees in the classifications(s) affected, unless the affected employees can be reasonably identified.

4. Any contracting out issue which is not mutually resolved in accordance with the foregoing procedure will be subject to the full grievance and arbitration procedure in the current Labor Agreement, including binding arbitration on the merits. Contracting out grievances initiated under this procedure will be filed directly in Step 3 of the grievance procedure, and the Step 3 meeting will be held within 10 days of such appeal. In the event the matter is not resolved in that meeting, the Company will respond in writing within 5 days of such meeting. If the Union disagrees with the written position of the Company, the Union Step 3 Representative (or his designate) may appeal such matter to arbitration within 5 days of receipt of the Company's answer, and such grievance shall be docketed for arbitration within fifteen (15) days. For purposes of this article, any of the time limits may be extended or waived by written agreement of the parties. All time limits exclude Saturdays, Sundays, and Holidays.

B. The Information Requests by Local 5760 Pertaining to Ormet Mill

Driscoll testified that in February 1996 Ormet Mill began a holding action in preparation for a possible work stoppage as of the May 31, 1996 collective-bargaining agreement expiration. Prior to that time, Ormet Mill had been assembling its own pallets or skids with the use of bargaining unit personnel. In anticipation of a work stoppage, Ormet Mill ordered 1200 skids from outside contractor Lannes Williamson Pallets. According to Driscoll, the contractor built these skids to Ormet Mills' specifications, based on a blueprint provided by Ormet Mill. Respondent has referred to these skids as type A skids. On May 31, 1996, a new collective-bargaining agreement was reached without a strike. It was agreed that the new subcontracting language set forth in article 39 would become effective on January 1, 1997.

In August or September 1996, Ormet Mill began to look for a permanent supplier of skids, as opposed to assembling them at its own facility. Driscoll testified that Ormet Mill eventually found a pallet from a Lannes Williamson catalogue, which was compatible with Respondent's needs. Ormet Mill began to order these skids, referred to as type B skids, in mid-January 1997, and sometime that month, Ormet Mill ceased assembling skids internally. According to Driscoll, two bargaining unit members were reduced out of skid assembly from Ormet Mill's box shop, and transferred to other positions within the collective-bargaining unit. Local 5760 asserts that four positions were actually lost.

On January 2, 1997, Ormet Mill began bringing the 1200 type A skids into its facility. Union Steward Lloyd Henderson filed grievance 192–97 on January 2, 1997, asserting that the Company used an outside vendor to fabricate skids that had been built by the bargaining unit. The grievance included the term "ongoing," which Henderson explained was meant to include all skids coming into the facility after January 2.

By letter dated January 9, 1997, Ralph Cline, chairman of the contracting out committee for Local 5760, requested that Lee Smith, manager of labor relations, provide the following materials to the Local by January 15, to allow for preparation for the third step meeting on grievance 192-97:

1. A copy of the contract between Ormet and Lannes Williamson Pallets.
2. A copy of the prints, sketches, or manufacturing instructions supplied by Ormet or at its behest to Lannes Williamson Pallets to fabricate the skids.
3. A copy of all correspondence between Ormet and Lannes Williamson Pallets concerning the building and purchasing of the skids.

By letter dated January 10, 1997, Cline requested that, by January 15, Smith provide Local 5760 with the following information:

1. A true copy of all invoices from Lannes Williamson Pallets . . . purchased in 1996 and 1997.

Henderson, Cline, and Steelworkers Staff Representative Gary Cochran attended the third step meeting taking place on January 16, 1997. Smith and Garren Davis, superintendent of finishing, attended the meeting for Ormet Mill. The box shop was located in Davis' department. Henderson testified that Davis informed the Union that the Company had sent prints to Lannes Williamson.

The testimony of Cline and Henderson revealed that both Cline and Smith had a copy of the Lannes Williamson catalogue with them at the January 16 meeting. Henderson testified that he has investigated and determined that the skids that the Company was using, at the time of the hearing, were not the same as those contained in Lannes Williamson's catalogue. He explained that the skids in the catalogue would not work with Ormet Mill's stretch wrap line. Cochran testified that during the January 16 meeting he renewed the Union's information request contained in the January 9 and 10 letters. Smith's response was that the pallets were a shelf item, and that the Respondent was not obligated to provide the requested information.

Cline testified that the Respondent had provided the Union with no notice that the skids were coming, and that, prior to the unfair labor practice trial, Respondent had never informed the Union that there was a difference between "type A" and "type B" skids. By letter dated January 31, 1997, Cochran wrote Smith renewing the Union's request for the information set forth in the January 9 and 10 letters. Cochran stated that the Company has contracted out work that had been performed by the bargaining unit since the plant began operation, resulting in a loss of four jobs, and of employees being laid off. He went on to state that the Union needed the information to prepare its grievance for arbitration and threatened the filing of an unfair labor practice charge. By letter dated February 4, 1997, Smith replied, stating that the documents requested were confidential internal company records, and that they were not relevant to the parties' dispute. The unfair labor practice charge in Case 8–CA–28811 was filed on February 11, 1997. Smith denied the grievance in her third step response, dated March 3, 1997, by stating that the pallets were ordered from the vendor's catalogue, and that such action did not violate the provisions of article 39.

On October 13, 1997, Cochran wrote Isaly, who had replaced Smith as labor relations manager for Ormet Mill. Cochran stated that there was a tentative date to arbitrate the pallet grievance on November 18, 1997, and he renewed the Union's January 9 and 10 information requests. Cochran testified that the arbitration was canceled because the requested information was not supplied.

On August 28, 1998, the Regional Director for Region 8 approved an informal settlement between the parties' settling several unfair labor practice charges, including Case 8–CA–28811. The notice incorporated in the settlement agreement, provided in pertinent part that, "We will provide the Union with requested relevant information regarding the pallet issue, provided that the case is not settled within the very near future."

By letter dated October 2, 1998, Cochran wrote Driscoll regarding problems Locals 5724 and 5760 were having obtaining requested information. The August 1998 settlement agreement was referenced in the letter, which was copied to Region 8 Compliance Officer Norma Sharp. On October 5, 1998, Cochran wrote Sharp stating that it did not appear that the parties were going to be able to resolve the "Pallet" issue. By letter dated October 7, 1998, Driscoll responded to Cochran's October 2 letter. As to Local 5760, Driscoll stated that he was unaware of any recent information request on any issue. By letter to Driscoll, dated October 14, 1998, Cochran restated the pallet related information requests that had been set forth in Cline's January 9, and 10, 1997 letters. Cochran asserted that the information was necessary and relevant to prepare grievance 192–97 for arbitration.

On October 16, 1998, Driscoll wrote Cochran, stating that, in accordance with the settlement agreement, the parties had continued to meet regarding the pallet issue. Driscoll referenced a meeting on October 15, 1998, where the Employer had agreed to obtain certain requested cost data associated with its projected savings. Driscoll stated that all of his dealings the last several months had been with Steelworkers Staff Representative Denny Longwell and/or Local 5760 President Dick Klug. Cochran responded to Driscoll by letter dated October 23, 1998. He stated that Klug had reported to him that the Employer's proposals were insufficient to resolve the grievance, that Klug did not feel that the grievance would be resolved, and that the matter needed to be scheduled for arbitration as soon as possible. He stated that this was the Local's second request for cost data associated with projected savings, and that the first request for this information had been made 2 months earlier. Cochran stated that the cost data information was in addition to the information the Union had previously requested which was covered in the settlement agreement. Cochran reported that this was his third letter requesting this information. Cochran's October 23, 1998 letter was copied to Sharp.

By letter to Sharp, dated November 4, 1998, Cochran requested that the settlement agreement be set aside. By letter dated November 10, 1998, Sharp informed Cochran that the Respondent had been advised of the Union's position, and that the Respondent was given until November 18, 1998, to respond.

On November 10, 1998, Driscoll wrote to Longwell confirming that a meeting on the pallet issue had been scheduled on November 24, 1998. Driscoll stated that the Employer had made a monetary settlement offer during a meeting with Klug on October 14, 1998, and that the Employer was awaiting the Union's response.

Isaly testified that he attended two or three meetings with the Local, where cost information was discussed at the Local's request. There was a meeting on October 14, 1998, with Longwell and Klug, among others, in attendance. There was a second meeting a couple of weeks later. Isaly showed the union officials a summary that the Respondent had prepared showing the size of skids purchased in 1997, the number of skids at each size purchased, the cost per skid from the contractor, and the cost per skid to Respondent when it produced the skids in 1994. The summary included the savings that accrued to Respondent as a result of the subcontracting. Isaly, along with Driscoll, attended another meeting with various union officials on November 24, at which time the summary was given to the Union. The summary also included answers to questions that had been raised by the Union. Isaly was not aware of what underlying documents were used to prepare the summary.

By letter dated November 20, 1998, Cochran informed Sharp that the Respondent had still not provided the requested information concerning the pallets, and he renewed his request that the settlement agreement be set aside. On December 1, 1998, Driscoll wrote to Longwell stating that the Employer was reviewing the Union's settlement offer. On December 11, 1998, Cochran wrote Sharp, in which he discounted Driscoll's assertions that the parties were close to a settlement of the pallet grievance, and he reported that the Employer was still refusing to provide the requested information required under the settlement agreement.

By letter dated December 29, 1998, Driscoll wrote to Cochran stating that he had been repeatedly asked by Sharp to provide information on the pallet issue set forth in Cochran's October 14, 1998 letter. Driscoll stated that he was currently considering the Union's last proposal on settlement of the issue, yet the Respondent was being told by Sharp, in the Union's behalf that the Respondent's offer was not acceptable. It was stated that Cochran was misleading Sharp as to the status of the case. Driscoll also posited several questions regarding the Union's outstanding information request. He stated that he did not believe that a written contract exists, but he asked for an explanation of the relevancy of that information to the Union's grievance. With respect to item 2, he stated that we order our skids from a manufacturer's brochure, and that if the Union wanted a copy of the brochure its relevancy should be explained. Similarly, an explanation for the relevancy of all correspondence was requested. With respect to item 4, it was stated that invoices are material billing documents and were considered to be confidential. It was stated that it was known that the pallets were provided by Lannes Williamson Company, and that the costs associated with purchasing skids versus building them in house had been provided to the Local Union. Driscoll also asked for an explanation of how any bill or invoice would be relevant to the issues involved in the grievance.

By letters dated January 26 and February 11, 1998, Longwell requested that Driscoll respond to the Union's settlement offer

made to the Respondent in November 1998, stating that if the matter could not be resolved the parties should pursue arbitration as soon as possible. Driscoll responded by letter dated February 16, 1999, in which he suggested another meeting to continue efforts to resolve the pallet dispute.

Longwell testified that the pallet grievance had still not been settled. Longwell stated that around March 1999, he had discussed the possibility of settling the grievance with Driscoll during the parties' upcoming contract negotiations. Longwell stated that he agreed that they would not arbitrate the grievance until after negotiations, but Longwell also stated that he did not think that the grievance would be resolved during negotiations.

Driscoll testified that the Respondent has not provided the Union with a copy of the contract between Ormet and Lannes Williamson, stating, "I don't think there is one that exists." He stated that he was told by the purchasing department that the transaction would have been accomplished by a requisition. However, neither a requisition nor purchase order was provided to the Union. Driscoll testified that a copy of a contract between Ormet Mill and Lannes Williamson was not relevant to the Local because it was common knowledge that Respondent was bringing in 1200 skids, and that those skids had been purchased in anticipation of a work stoppage. He added that there was also discussion that internal memos between Respondent and its contractors were considered to be confidential. Driscoll testified that copies of prints, sketches, or manufacturing instructions given by Respondent to Lannes Williamson to fabricate the type A skids were not relevant to the grievance, because, "there was never a dispute that, at least from my point of view, we had them manufactured to our specifications." However, Driscoll could not recall any specific conversation where he informed the Union of these facts. When asked whether the type B pallets were revised or modified when they came into the plant, Driscoll responded, "Not that I am aware." When asked if the type B pallets were catalogue items, Driscoll responded, "that's what they tell me."

Driscoll stated that the Union had never been provided a copy of correspondence between Ormet and Lannes Williamson concerning the pallets. He stated that he never looked to see if such correspondence exists. Finally, Driscoll stated that the Union was never provided copies of the invoices, which were considered to be confidential under company policy. He stated that the purchase order numbers, among other items on these documents, were confidential. He testified that the number of items purchased was also considered to be confidential. However, when shown the summary that Respondent had presented to the Local, Driscoll conceded that Respondent had actually supplied the Union with the number of skids purchased in 1997. He explained that the invoice number would allow the Union to call the subcontractor, under the pretext that they were calling on behalf of the plant. Driscoll testified that the invoices were not relevant, rather, the relevant information was the cost, and that was provided to the Union.

It was Respondent's contention that the type A pallets were made under the old collective-bargaining agreement, but brought into the plant on January 2, 1997, under the terms of the May 1996 contract. Driscoll explained that the contract language under article 39 was to take effect January 1, 1997, and that it was felt that Respondent had certain rights concerning subcontracting under the new contract that they might not have had under the prior agreement. Driscoll conceded that, in 1997, he had probably told Cochran on more than one occasion, that he was not going to provide the Union with the requested information because Respondent was not going to prepare the Union's case for arbitration.

C. The Information Requests by Local 5724 Pertaining to Ormet Primary

Lauren Hartshorn is the chairman of the contracting out committee and a grievance committeeman for Local 5724. Hartshorn identified eight contracting out notifications that he had received from Respondent during late March through July 1998. He testified that he either met with Labor Relations Manager Steve Shepherd or Isaly with respect to each of the notifications. However, the Respondent failed to offer the work to bargaining unit employees. Hartshorn explained that the parties' procedure is for the Union to receive a contracting out notification, and then Hartshorn will investigate the matter with a company engineer. Thereafter, there will be a meeting attended by union officials and Ormet Primary human resource and operational people such as an engineer and the maintenance superintendent. Hartshorn filed grievances with respect to each of the eight contracting out notifications asserting that the Respondent's actions violated collective-bargaining agreement article 30. The grievances were denied by Respondent at the third step of the grievance procedure.

The grievances were as follows:

> Grievance 618, filed on April 6, 1998, "Replace and Repair Casting Cylinder", notification 98-11;
> Grievance 619, filed on April 6, 1998, "Renovation of Cast House Dross Room", notification 98-8;
> Grievance 638, filed on April 28, 1998, "Potline Fluoride Sampling System", notification 98-7;
> Grievance 640, filed on April 28, 1998, "Replace Slew Hosts", notification 98-9; Grievance 660, filed on May 19, 1998, "Upgrade DB Circuit Breakers", notification 98-12;
> Grievance 754, filed on August 17, 1998, "Material Storage Building Roof", notification 98-19;
> Grievance 755, filed on August 17, 1998, "Center Passageway Floor Repair", notification 98-16; and
> Grievance 756, filed on August 17, 1998, "Expansion Joint Repairs", notification 98-17.

At the time of the hearing, the grievances were still pending, waiting to be scheduled for arbitration.

The parties met on four contracting out notifications on April 6 and 7, 1998. Hartshorn tendered information requests relating to contracting out notifications 98-7, 98-8, 98-9, and 98-11, during these meetings, which was confirmed by a letter to Isaly dated April 27, 1998. Isaly responded by memo dated May 8, 1998, denying the information requests. He stated, "Should you give specific justification for your request and show the relevance to the issues, I will entertain your request within reason." The information requests were submitted on four separate identical forms, each containing the explanation, that "In

order to effectively administer our collective-bargaining agreement and handle the above contracting out notification, Local 5724 requests the following information":

1. Was consideration given to any of the qualified employees? Did the Company attempt to utilize plant forces? If so, how?
2. The Union requests all documents which have been provided to the sub-contractor of this job.
3. The Union requests a copy of the agreement signed by the sub-contractor and the Company.
4. The Union requests documents, included but not limited to contracts and correspondence, which in any way limit Ormet's ability to assign this work to bargaining unit employees.
5. The Union requests the names and job classifications of all individuals who will be performing this work, and the amount of money they have been paid.
6. If it is your claim that this work is being contracted out because of special equipment involved, describe it.
7. If it is your claim that this work is being contracted out because of special skills involved, described them.
8. A breakdown of the crafts involved, using bargaining unit craft designations.
9. A description of the anticipated utilization of bargaining unit forces during the period this work will be performed.
10. Provide copies of all documents which have been or will be provided to the Company performing this work that relate thereto.
11. Provide copies of any internal memos, notes, directives or other documents which set forth Ormet's current policy or practices regarding the contracting out of the work involved.
12. The Union requests a copy of the appropriation request.
13. The Union requests a copy of the engineering estimate.
14. If it is your claim that this work is being contracted out because of manpower, give us the amount of men working each shift and classifications.

On May 12, 1998, Hartshorn filed an information request as to notification 98–12, and on August 7, 1998, he filed information requests for notifications 98–16, 98–17, 98–19, and 98–21. All the requests were on the same typewritten form, and solicited the same information referenced above. Hartshorn obtained the information questionnaires from a judge's decision in a U.S. Steel case. He began using the questionnaire in 1995, but stopped using it for a period of time after Driscoll had objected to the format and refused to provide the requested information. Hartshorn estimated that, during his 5 years as chairman of the contracting out committee, 97 or 98 contracting out grievances had been filed, with around 88 still in the pipeline. Hartshorn explained that the Local was receiving 25 or 30 contracting out notifications a year, and that there were a lot of grievances with the possibility of arbitration in the system. He stated that he reinstated the use of the questionnaire because of the number of grievances and because he needed the requested information for arbitration. Hartshorn testified that while the contracting out language came into the parties' collective bargaining agreement in 1990, no grievances had gone to arbitration until the beginning of 1997. It was during the initial arbitration that, according to Hartshorn, Respondent testified to facts that had not been disclosed to the Local. Following the arbitration, Hartshorn protested to Driscoll but was told that, "[W]e can testify to whatever we want." This exchange motivated Hartshorn to reinstate the use of the questionnaire as a means of preventing the Local from being surprised at arbitration.

By letter dated August 21,1998, addressed to Shepherd, Hartshorn renewed all of his outstanding information requests. This letter referenced information requests pertaining to 10 contracting out notifications. In the interim, Driscoll had sent a letter to Cochran, dated August 11, 1998, stating that the Employer has resisted responding to information requests in the form of "canned questionnaires," but that the Employer would respond to any legitimate information request for relevant data relating to contracting out. Driscoll stated, "To date, other than the 'canned' demands we have received no information request." Hartshorn responded to Driscoll's August 11 letter, by letter dated August 28, 1998. Hartshorn stated that the requests were necessary and relevant for the effective administration of the grievance process. However, he trimmed the information requests by placing a check mark next to the item the Local was still seeking with respect to each notification, and by attaching the revised forms to his August 28 letter to Driscoll. The revised forms revealed that the Local had reduced its request for each contracting out notification, but was still seeking information items 1, 3, 6–9, and 14 with respect to all nine attached contracting out notifications, and was also seeking information item 13 for contracting out notifications 98–7, 98–8, 98–9, 98–19, and 98–23. Notification 98–23 relates to subcontracting of DSS Stack Capacity Monitors. It is not specifically referenced by any of the grievance numbers incorporated in the consolidated complaint. Nevertheless, it was offered into evidence by way of stipulation by the General Counsel, without objection by the Respondent. It was stated by the General Counsel, at that time, that the outstanding complaint was limited to the information requests as amended by the August 28, 1998 questionnaires.[7]

Shepherd wrote to Hartshorn on September 17, 1998, in response to the August 28 letter to Driscoll. Shepherd maintained that it appeared that the requests were not relevant, but offered to meet to review the matter. Hartshorn testified that he met with Shepherd around October 5 and that he reviewed with Shepherd the relevance of each of the items remaining in the outstanding information requests. Hartshorn informed Shepherd that the relevance of item 3 was to determine if the Re-

[7] Par. 9 of the consolidated complaint incorrectly alleges that Hartshorn's letter amending the information requests issued on August 21, 1998, rather that August 28, 1998, as set forth above.

spondent had contracted out the work before meeting with the Union. He stated that he needed item 6, so that he was not blindsided in front of an arbitrator with a special equipment defense. Shepherd was told that the information as to item 7, with respect to special skills, would afford the Local the opportunity to withdraw the grievance prearbitration, if skills were needed that were outside the scope of bargaining unit. Item 8, with respect to a breakdown of crafts, was needed to apportion any monetary award the Union might obtain during arbitration. Shepherd was informed that item 9 was needed to apprise the Local of the intended utilization of unit employees at the time the contracted work was to be performed. The engineering estimate referenced in item 13 would apprise the Local of the number of hours needed to perform the job, and the crafts involved. The manpower request in item 14, would allow the Local to determine and/or argue whether bargaining unit members could staff the job. Hartshorn testified that, at the end of the meeting, Shepherd stated that he understood the requests and that he did not see a problem with them, but that he would have to discuss it with Driscoll.

Hartshorn wrote Shepherd on October 6 stating that he had discussed the information requests with the National Labor Relations Board, and he requested that that the information be provided by October 15. Hartshorn testified that the information was not provided.

Hartshorn explained that, to his understanding, the engineering estimate includes a time frame, how much the job is going to cost, and how many man-hours will be involved in each classification. He testified that, while the Respondent provides an estimated number man-hours per job on the contracting out notification, this does not address the information requested in item 14 in that it does not reflect the amount of men that would be performing the work, or the shifts that are involved. Hartshorn needed to know how the job was going to be manned by the contractor, in order to be able to make suggestions as to the ability of bargaining unit members to perform at least a portion of the work. He stated that it was important to know the job classifications of the contractor's employees who were performing the work. Hartshorn explained that the reason for contracting provided in a sample of one of the Employer's contracting out notifications was not necessarily responsive to item 1 in the Local's questionnaire. He stated that, while the Employer posts weekly bargaining unit work schedules, this does not tell the Local what the bargaining unit would be doing a month or two down the road at the time of the subcontract.

Driscoll testified that the Respondent did not provide the requested information because he did not believe that it was appropriate to make the same demand for information for every potential grievance in that each case is different and needed to be dealt with on an individual basis. He also stated that the parties had negotiated a collective-bargaining agreement that sets forth the information to be provided to the Union. He testified that the Respondent has observed the meetings and notification requirements of article 30. He testified that Shepherd had only been working in labor relations for 3 months at the time of the October 1998 meeting with Hartshorn. With respect to contracting out projects, Driscoll testified manpower requirements are done in terms of number of hours, and it is up to the contractor to determine how the job is manned. He stated that the Respondent does not control the crafts or the number of people the contractor uses.

Driscoll reported that he told the Local that he was not going to accept the form requests when he was first approached in 1995, and he explained his reasoning to Hartshorn, as set forth above. Driscoll stated that he told both Hartshorn and Cochran to be reasonable in their requests, to make a specific request, and if it was relevant the Respondent will honor it. However, Driscoll later admitted that he viewed all the Union's requests in the questionnaires as being specific. Driscoll also conceded that the Respondent does not provide the Local with all the information set forth in article 30 for every contracting out notification. He cited the word "generally" which is incorporated in article 30 as affording the Respondent discretion as to what is actually to be provided.

III. ANALYSIS AND CONCLUSIONS

A. The Arguments of the Parties

While it is alleged in the consolidated complaint that Ormet Corporation, Ormet Mill, and Ormet Primary constitute a single employer, in his posthearing brief, the General Counsel only argues for a single-employer finding as to Ormet Mill and Ormet Primary. The General Counsel contends that the relevancy for the requested information concerning the pallet issue was self-evident, and therefore there was no need for the Union to meet and discuss the relevancy with Respondent. There was no showing that the information request was burdensome or intended to harass or annoy the Respondent. The Respondent has still not settled the underlying grievance or provided the requested information 8 months after it entered into the informal settlement agreement. It is contended that Respondent's delay has been too long, and that the settlement agreement has been violated. It is noted that, as to Local 5724's information requests, Respondent's primary concern appears to be the similarity of the requests. However, all of the information requests relate to subcontracting issues, the requests were modified, and the Respondent's strategy appears to be one of delay.

Respondents opine, in their posthearing brief, that a single-employer finding is unnecessary for the resolution of these cases involving information requests. It contended that there is no common thread, pattern, or common pernicious practice on the part of Ormet Mill and Ormet Primary requiring a linkage of these cases. This contention is bolstered by the General Counsel's withdrawing his request for a broad cease-and-desist order during the course of the hearing. In the absence of conduct that would justify a broad cease-and-desist order, the only other obvious reason to seek a single-employer finding, in the context of an alleged unfair labor practice case, would be to secure payment of backpay. Since there is no backpay component to the allegations herein, the single-employer inquiry should end. Respondents cite *Allegheny Graphics,* 320 NLRB 1141 (1996), enfd. sub. nom. *Pack Service Co. v. NLRB,* 113 F.3d 845 (8th Cir. 1997); and *ABC Automotive Products Corp.,* 319 NLRB 874 (1995), as examples of cases where single-employer status was addressed by the Board as a means of preserving backpay. Respondents argue that when pressed at the hearing, the General Counsel never articulated a reason why

such a finding should be made. Respondents also assert that the General Counsel failed to establish sufficient record evidence to warrant a single-employer finding.

Respondents argue that Local 5760 already has the information it needs to process its grievance. Respondents admit that the type A skids were made according to a blueprint supplied by Ormet Mill, and that since the Local knows that 1200 type A skids were purchased it could establish how long it would have taken bargaining unit members to assemble the skids, as well as any loss to unit members. It is contended that who built the skids, where, when, at what cost, whether under a contract, purchase order or verbal agreement, and the cost to transport them is irrelevant. With respect to the type B skids, it is argued that Ormet Mill bought them off a shelf, and the Local has the catalogue from which the skid was ordered. Type B skids are either a shelf item in which case the information beyond the catalogue is irrelevant, or they are not, in which case the grievance turns on simple math as it applies to assembly of the type A skids. It is asserted that the Local has all of the information that it requires to process a grievance. Respondents contend in their answer to the consolidated complaint that Ormet Mill is making a good-faith effort to settle the underlying grievance and therefore has not breached the informal settlement agreement.

Regarding the information requested by Local 5724, Respondents contend that Ormet Primary has consistently supplied information required by the collective-bargaining agreement. Additionally, although Ormet Primary's obligation ends with providing information set forth in the contract, when it becomes apparent at the contracting out meeting or thereafter that other information is relevant to a particular instance of contracting out, Ormet Primary freely responds to particularized requests. It is argued that Local 5724's resort to the use of standardized forms for information requests, which had been rejected by the Company in 1995, signifies that the information requests were not made in good faith. It is also asserted that the information requested on the forms was in many instances supplied in the contracting out notifications. Respondents contend that information sought such as a copy of the agreement between Ormet Primary and the contractor and a copy of the engineering estimate shed no light on whether Ormet Primary employees or contractors should perform the work in question. It is also impossible to believe that nine different contracting out situations covering a wide range of work would require the same set of form information. It is argued that the Local refused Respondent's September 17, 1998 request to discuss the relevancy of the information requests, plainly signifying that they were made in bad faith. Respondent contends that the standardized form requests were intended to harass and unduly burden Ormet Primary, rather than to elicit relevant and necessary information. The court's decision in *NLRB v. Wachter Construction,* 23 F.3d 1378 (8th Cir. 1994), is cited in support of this conclusion. The fact that the Employer had provided all of the information specified in article 30 underscores the Local's bad faith in making the form requests. Further, to the extent Local 5724's standardized form requests information beyond that set forth in the collective-bargaining agreement, the Local has waived the right to request this information. *American Broadcasting Co.,* 290 NLRB 86 (1988). Finally, it is contended that Ormet Primary has never flatly refused to provide the requested information. Rather, it has requested clarification, which is an appropriate response given the facts in this case. *Holiday Inn Coliseum,* 303 NLRB 367 (1991); *A-Plus Roofing,* 295 NLRB 967 (1989); and *Barnard Engineering Co.,* 282 NLRB 617 (1987).

D. Discussion and Conclusions

1. Single-employer status

In *Viking Industrial Security,* 327 NLRB 146 (1998), the Board majority noted that the four factors considered by the Board, and approved by the Supreme Court, in determining whether two employers constitute a single employer are: (1) interrelation of operations; (2) common management; (3) centralized control of labor relations; and (4) common ownership. It was stated therein that "none of these factors, alone is controlling, and not all of them need to be present. Finding single employer status ultimately depends on all the circumstance of the case." (Citations omitted.) Ormet Mill and Ormet Primary are each owned by C.E. Boyle. Boyle is also the president and CEO of both operations. They are each located in Hannibal, Ohio, and Ormet Primary transports at least some of its product to Ormet Mill for processing. Equipment is exchanged between the two operations in emergency situations. Ormet Primary employs Driscoll as corporate industrial relations director. However, Driscoll also has corporate responsibilities for Ormet Mill including labor and industrial relations. There was no showing that Driscoll was separately compensated for his activities on behalf of Ormet Mill. Driscoll participated in negotiations for the current collective-bargaining agreement for both entities, and he signed off on both contracts as director of labor relations. Boyle, Schick, and W.R. Smith were also signatories to both labor agreements. Moreover, the evidence reveals that Driscoll was a key player in both Ormet Mill's and Ormet Primary's responses to the information requests from each of the Local Unions. Isaly, the current manager of labor relations at Ormet Mill, had previously occupied that position for Ormet Primary.

Respondent contends that a single-employer finding is not warranted because of the nature of the violations alleged. However, there is a common thread between the allegations lodged against the two entities, that is, they relate to the breach of an informal settlement agreement, and repeated refusals to requested information pertaining to the possible subcontracting of bargaining unit work. While the General Counsel has withdrawn his request for a broad cease-and-desist order, the repeated nature of Respondent's refusal to provide requested information merits documentation. This is particularly so, should it continue to engage in this course of conduct. Moreover, a single-employer finding is warranted for purpose of responsibility as to the underlying information requests. The evidence reveals interrelation of operations to product processing and use of equipment, common management, centralized control of labor relations, and common ownership as to Ormet Mill and Ormet Primary, and I find that they constitute a single-integrated enterprise and single employer under Board law.

The General Counsel apparently concedes in his posthearing brief that evidence as to single-employer status by Ormet Mill or Ormet Primary with Ormet Corporation is lacking in this

record. The ownership of Ormet Corporation has not been established, and the record is sparse as to its management, labor relations, or as to whether its operations are interrelated with the two other named companies. Accordingly, I find that the General Counsel has failed to meet his burden of establishing that Ormet Corporation constitutes a single employer with the other named entities.

2. The Respondent's refusal to provide requested information

In *A-Plus Roofing, Inc.,* 295 NLRB 967, 970 (1989), enfd. *NLRB v. A-Plus Roofing, Inc.,* 39 F.3d 1410 (9th Cir. 1994), the applicable principles concerning requests for information were set forth as follows:

> An employer, pursuant to Section 8(a)(5) of the Act, has an obligation to provide requested information needed by the bargaining representative of its employees for the effective performance of the representative's duties and responsibilities. *NLRB v. Acme Industrial Co.,* 385 U.S. 432, 435–436 (1967). The employer's obligation includes the duty to supply information necessary to administer and police an existing collective-bargaining agreement. (Id. 435–438), and, if the requested information relates to an existing contract provision it thus is "information that is demonstrably necessary to the union if it is to perform its duty to enforce the agreement. . . ." *A. S. Abell Co.,* 230 NLRB 1112–1113 (1977). Where the requested information concerns employees …within the bargaining unit covered by the agreement, this information is presumptively relevant and the employer has the burden of proving lack of relevance . . . . Where the request is for information concerning employees outside of the bargaining unit, the union must show that the information is relevant. *Brooklyn Union Gas Co.,* 220 NLRB 189 (1975); *Curtiss-Wright Corp.,* 145 NLRB 152 (1963), enfd. 347 F.2d 61, 69 (3d Cir. 1965). In either situation, however, the standard for relevancy is the same: a "liberal discovery-type standard." *Loral Electronic Systems,* 253 NLRB 851, 853 (1980); *Acme Industrial,* supra at 432, 437. Thus information need not necessarily be dispositive of the issue between the parties, it need only have some bearing on it.
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> Once the initial showing of relevance has been made, "the employer has the burden to prove a lack of relevance . . . or to provide adequate reasons as to why he cannot, in good faith, supply such information." *San Diego Newspaper Guild,* supra at 863, 867. Where the relevance of requested information has been established, an employer can meet its burden of showing an adequate reason for refusing to supply the information by demonstrating a "legitimate and substantial" concern for employee confidentiality interests which might be compromised by disclosure. *Detroit Edison v. NLRB,* 440 U.S. 301, 315, 318–320. In resolving issues of asserted confidentiality, the Board first determines if the employer has established any legitimate and substantial confidentiality interest and then balances that interest against the union's need for the information. *Detroit Edison,* id. at 315, 318; *Minnesota Mining & Mfg. Co.,* 261 NLRB 27, 30 (1982); *Pfizer Inc.,* 268 NLRB 916 (1984). However, where the employer fails to demonstrate a legitimate and substantial confidentiality interest, the union's right to the information is effectively unchallenged, and the employer is under a duty to furnish the information. *Oil Workers Local 6-418 v. NLRB*, 711 F.2d 348, 360 (D.C. Cir. 1983); *NLRB v. Jaggars-Chiles-Stovall, Inc.,* 639 F.2d 1344, 1346-1347 (5th Cir. 1981); *NLRB v. Associated General Contractors of California,* 633 F.2d 766 (9th Cir. 1980).

Information requested to enable a union to assess whether a respondent has violated a collective-bargaining agreement by contracting out unit work and, accordingly, to assist a union in deciding whether to resort to the contractual grievance procedure, is relevant to a union's representative status and responsibilities. *AK Steel Corp.,* 324 NLRB 173, 184 (1997); and *Island Creek Coal Co.,* 292 NLRB 480, 490 (1989), enfd. 899 F.2d 1222 (6th Cir. 1990).

A. The Information Requests by Local 5760 Pertaining to Ormet Mill

On January 2, 1997, Local 5760 filed grievance 192-97 asserting that Ormet Mill used an outside vendor to fabricate skids that were normally built by the bargaining unit in violation of the collective-bargaining agreement. On January 9,1997, the Local requested a copy of the contract between Ormet and Lannes Williamson Pallets, a copy of prints, sketches or manufacturing instructions supplied by Ormet or at its behest to Lannes Williamson Pallets, and a copy of all correspondence between Ormet and Lannes Williamson Pallets concerning the building and purchasing of the skids. On January 10, 1997, the Local requested that Respondent provide it with a true copy of all invoices from Lannes Williamson Pallets purchased in 1996 and 1997. As the record demonstrated, the Union has continued to seek this information through repeated requests, including written requests on January 31 and October 13, 1997. On August 28, 1998, the Regional Director approved an informal settlement agreement, in which Ormet Mill agreed to provide the Union with requested relevant information regarding the pallet issue, provided that the case is not settle within the very near future. Subsequent requests for the disputed information were again made in writing by the Union on October 2 and 23, 1998.

I find that the requested information is relevant to the Union's performance of its statutory functions. The Union, in accord with its duty to police the collective-bargaining agreement and in order to process its grievance, sought to determine whether the contracting out provisions of the collective-bargaining agreement had been violated by the contracting out of work that had in the past been performed by the bargaining unit. *AK Steel Corp*., supra at 184; and *Island Creek Coal Co.,* supra at 490. Given the contractual language on subcontracting, and the reference to a recently filed grievance, the relevance of the requested information should have been readily apparent to Respondent. Moreover, any question at to the relevancy of the requested materials was clearly explained by Cline's testimony at the hearing. See *Ohio Power Co.,* 216

NLRB 987, 990–991 fn. 9 (1975), enfd. *NLRB v. Ohio Power Co.,* 531 F.2d 1381 (6th Cir. 1976), holding the adequacy of information requests to apprise a respondent of the relevancy of the information must be judged in the light of the entire pattern of facts available to the respondent. It was found therein that the respondent was, at a minimum, apprised of the relevancy of the requests by the testimony of the union officials, and that the respondent's continuing refusal to accede to those requests could no longer be attributed to inadequacy of communications.

Cline credibly testified that Ormet Mill had provided the Union with no notice that the skids were coming, and that a copy of the contract between Ormet and Williamson was needed in order to determine when the Respondent bought the skids, and how long the contracting out was going to last. The request for a copy of the prints, sketches, or manufacturing instructions supplied by Ormet was necessary because of the language in article 39 of the collective bargaining relating to shelf items. Cline requested the correspondence between the two companies in order to ascertain a history of their transactions relating to the skids. Cline requested the invoices because the Union did not know whether Respondent was going to argue a cost basis for contracting these items. The Union wanted to determine the cost, as well as expenses for their import, such as the cost of trucking for bringing the skids into the plant. Cline explained that the invoices would also be helpful in explaining to an arbitrator the amount of moneys lost to the bargaining unit by the contracting out.

Cline credibly testified that, prior to the date of the unfair labor practice trial, Respondent never informed the Union that there was a difference between "type A" and "type B" skids. To the extent that Driscoll's testimony contradicts this assertion, I credit Cline. Driscoll's testimony was vague and somewhat inconsistent. Moreover, in her March 7, 1997 third step response to the grievance, Smith merely stated that the pallets in question were ordered from a vendor's catalogue. She never distinguished or stated that there was a type A pallet ordered to Ormet's specification in anticipation of a strike. Similarly, by letter to Cochran, dated December 29, 1998, in reference to the Local's requests for prints, sketches, and instructions to the manufacturer, Driscoll asserted that Respondent ordered its skids from a manufacturer's brochure. Driscoll made this blanket assertion with respect to all the skids in dispute. He never distinguished between the type A and B skids, as was done for the first time in Respondent's February 15, 1999 answer to the consolidated complaint. Additionally, regarding the type B skids, Henderson credibly testified that he has investigated the matter and that, in his view, the skids in usage at the time of the hearing were not the same as those contained in Lannes Williamson's catalogue. He explained that the skids in the catalogue would not work with Ormet Mill's stretch wrap line. The information requests concerning the prints, sketches, instructions to manufacturer, and the correspondence between Ormet and Williamson are plainly relevant for the Local to determine whether the type B skids meet the terms of a shelf item within the meaning of the collective-bargaining agreement, or whether they have been modified in such a manner to justify a claim that the agreement had been violated.

Respondent argues in its answer to the consolidated complaint that Ormet does not contest that it supplied blueprints for the production of the 1200 (type A) skids, and it contends that none of the information requested has any bearing on whether Local 5760 has any claim to the work represented by the 1200 skids. Similarly, Respondent argues that the skids purchased beginning in mid-January 1997 were shelf items, and that the Local has no claim to the work represented by these latter skids, or any additional information concerning those skids. However, as the Board found in *Ohio Power Co.,* supra at 995:

> As a further reason for not being required to produce the information requested, the Respondent says that the information would not be useful or helpful in processing the grievances. That proposition, however, is one for presentation in the grievance procedure.

It cannot be said that a union would be fulfilling its statutory responsibility of policing a contract by blindly accepting a respondent's assertions as to the merits of a grievance, or for that matter what the requested information would show without being provided access to the underlying documents upon which those representations are made. While the Local was provided a summary by Respondent in November 1998, showing the number of skids purchased in 1997 and the cost per skid, this does not serve as a substitute for the Local's request for invoices from Williamson for 1996 and 1997. For the Local is entitled to the original documents, not just to unverified summaries made by Respondent's officials. In this regard, the Local is entitled to the base line information to formulate its own arguments rather just accepting positions posited by Respondent. Thus, it was entitled to the requested invoices. See *Merchant Fast Motor Line,* 324 NLRB 562 (1997) (holding that a union was not required to accept a respondent's declaration as to profitability or summary financial information provided by the respondent); *McQuire Steel Erection,* 324 NLRB 221 (1997) (summaries of payroll records deemed not sufficient to meet a respondent's statutory obligation); *New Jersey Bell Telephone Co.,* 289 NLRB 318, 330 fn. 9 (1988), enfd. mem. *NLRB v. New Jersey Bell Telephone Co.,* 872 F.2d 413 (3d Cir. 1989) (summary of an employee's absence records found not to be acceptable, with the administrative law judge stating that a grievance under a collective-bargaining agreement is analogous to a trial, wherein summaries may be offered by a party but it must make available to the other side the records on which the summary is based. Fed.R.Evid. 1006.); and *Pertec Computer,* 288 NLRB 810, 822, (1987) (the provision of a cost study insufficient absent access to the financial records from which the study was derived.)

Respondent contended at the hearing that cost of the skids was not relevant under the provisions of the collective-bargaining agreement. However, Driscoll conceded by his testimony and by his December 29, 1998 letter to Cochran that cost of production of the skids was relevant to the parties' discussion, although he contended that such information had been provided to the Local by way of the Respondent's summary. Moreover, whether savings to Respondent or lack thereof constituted a viable argument to an arbitrator under the contract, the invoices and the information they would contain would

certainly aid the Local in determining an appropriate settlement to the dispute, as well as in the formulation of any remedy they would request from an arbitrator.

In regard to the Local's request for the contract between Ormet and Lannes Williamson, Driscoll stated that, "I don't think there is one that exists." Driscoll's testimony on this point reveals that he had not properly investigated the matter and therefore Respondent has failed to meet its burden of demonstrating that the information was unavailable. See *Public Service Co. of Colorado,* 301 NLRB 238, 246 (1991). Moreover, Driscoll conceded that he had been informed by the purchasing department that the transaction would have been accomplished by a requisition. Assuming that the Respondent's search would establish that its agreement with the contractor was not set forth formally by way of a written contract, the Local's request was sufficient to apprise the Respondent that it was seeking any contract, purchase order, requisition, or other document that sets forth the terms of Ormet Mill's agreement with the contractor for the purchase of the pallets.

Driscoll's contention that the invoices were not provided because it was company policy that they were confidential cannot withstand scrutiny. He stated that the invoices contained purchase order numbers, which he asserted was sensitive information. However, the deletion of the purchase order numbers from the invoices was never suggested to the Union, nor has Respondent established any basis to believe that the Union would improperly use the purchase order number. This is particularly so when it is noted that Driscoll also contended that the number of items purchased was a matter of confidentiality to the Respondent, but then admitted that the Respondent had provided this information to the Union by way of its summary, at least for its 1997 purchases. Respondent has done no more than raise a bare claim of confidentiality or privacy, and as such it contention must be rejected. *Public Service Co. of Colorado,* supra at 247; *Richard Mellow Electrical Contractors Corp.,* 327 NLRB 1112 (1999); *Bryant & Stratton Business Institute,* 321 NLRB 1007 fn. 4 (1996), enfd. 140 F.3d 169 (2d Cir. 1998). It appears that its claims of confidentiality constitute one of a number of pretextual assertions in an effort to forestall compliance with its statutory obligations.

Respondent contends that it is making a good-faith effort to settle the underlying grievance concerning the pallets, and therefore has not violated the informal settlement agreement cited in the consolidated complaint. The initial information requests were made in January 1997. The informal settlement was entered into in August 1998 and provided that the matter would be settled in the very near future or the Respondent would provide the requested relevant information. The hearing in this matter was held some 8 months after the Regional Director approved the informal settlement agreement, and the matter had not been settled, nor had the requested information been provided. I have found the requested information to be relevant to the Union's statutory functions, and therefore Respondent, by its actions, has violated the plain meaning of the settlement agreement. By Respondent's logic, as long as the parties engage in never ending settlement discussions concerning the pallet grievance, it is satisfying the terms of the settlement. This contention contravenes the plain meaning of the settlement. Accordingly, I find that Respondent has refused to comply with the terms of the settlement agreement, and therefore the settlement agreement was properly set aside and is not in any way an impediment to addressing the unfair labor practice allegations of the consolidated complaint. *AAA Fire Sprinkler, Inc.,* 322 NLRB 69, 84 (1996); and *Twin City Concrete,* 317 NLRB 1313 (1995).[8]

It should be mentioned that by letter of December 28, 1998, almost a full 2 years after the Local Union made its initial request for the disputed information, Driscoll specifically questioned the relevancy of the four items of information requested by the Union. It appears that this was nothing but disingenuous attempt to delay providing the requested information. For, as I have found, the Union had repeatedly explained to the Respondent that it needed the information for the processing of the pallet grievance, and the Respondent would have been aware of its relevancy by the plain reading of the contracting out language of the collective-bargaining agreement. The transparency of Driscoll's request was demonstrated by the fact that he stated in the letter that the Respondent ordered its skids from a manufacturer's brochure, and that if the Union wanted a copy of the brochure, its relevancy should be explained. Yet, a copy of the brochure had been provided to the Union in January 1997, and Respondent has in effect stipulated to its relevancy by its repeated assertion that the brochure was the only information that the Union required to process its grievance. Driscoll's request for an explanation of the relevancy of the brochure was sheer gamemanship and is revealing as to the true intent of his letter, which was to continue to delay. Any further response by the Union to the questions Driscoll raised in his letter would have required the Union to engage in a futile act, as the Respondent had no intention of providing the information. See "*Automatic" Sprinkler Corp.,* 319 NLRB 401, 417 (1995); and *Iron Workers Local 377 (M.S.B., Inc.),* 299 NLRB 680, 684 (1990).

Accordingly, I find that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to furnish Local 5760 and the Steelworkers International Union a copy of the contract between Ormet Mill and the Lannes Williamson Pallets or in lieu thereof the applicable purchase orders or requisitions; a copy of prints, sketches, or manufacturing instructions supplied by Ormet or at its behest to Lannes Williamson Pallets, a copy of all correspondence between Ormet and Lannes Williamson Pallets, and a true copy of all invoices from Lannes Williamson Pallets purchased in 1996 and 1997.

[8] The General Counsel asserts in his posthearing brief that by admitting par. 8(c) in its answer to the consolidated complaint, Respondent has admitted that it has violated the terms of the settlement agreement. However, Respondent denied in its answer the allegations set forth in par. 8(b), which constituted the factual premise for the conclusionary assertions of par. 8(c). In these circumstances, and taking into account its positions at hearing and in its posthearing brief, I conclude that its admission in par. 8(c) constituted an inadvertent error. Moreover, since I have found that Respondent did in fact violate the terms of the settlement agreement, there is no purpose served for reliance on the General Counsel's technical contention.

A. The Information Requests by Local 5724 Pertaining to Ormet Primary

During the period of April 6 through August 7, 1998, Union official Hartshorn filed eight information requests in the form of identical questionnaires pertaining to eight contracting out notifications that had been tendered by Respondent. The Union has filed grievances as to each of the eight contracting out notifications. By letter dated August 21, 1998, addressed to Labor Relations Manager Shepherd, Hartshorn renewed his requests for all of the outstanding information. By letter to Driscoll, dated August 28, 1998, Hartshorn stated that the requested information was necessary for the effective administration of the grievance process. Hartshorn also trimmed the number of items requested from fourteen to seven or eight items depending on the contracting out notice involved, but included information requests for nine contracting out notifications.

Hartshorn credibly testified that he met with Shepherd, pursuant to the latter's request, around October 5, 1998, during which time Hartshorn reviewed with Shepherd, item by item, the relevance each of the items of the requested information. Hartshorn also credibly testified that Shepherd responded that he understood the requests, and that he did not see a problem with them, but that he would have to review the matter with Driscoll. Hartshorn again wrote Shepherd on October 6, 1998, and repeated his request for the information. The record contains no further response from Respondent.

The information that the Union was seeking, as limited by Hartshorn's August 28, 1998 letter, is set forth below:

> 1. Was consideration given to any of the qualified employees? Did the Company attempt to utilize plant forces? If so, how?
> 3. The Union requests a copy of the agreement signed by the sub-contractor and the Company.
> 6. If it is your claim that this work is being contracted out because of special equipment involved, describe it.
> 7. If it is your claim that this work is being contracted out because of special skills involved, described them.
> 8. A breakdown of the crafts involved, using bargaining unit craft designations.
> 9. A description of the anticipated utilization of bargaining unit forces during the period this work will be performed.
> 13. The Union requests a copy of the engineering estimate.
> 14. If it is your claim that this work is being contracted out because of manpower, give us the amount of men working each shift and classifications.

A review of the applicable provisions of the collective bargaining agreement, as well as Hartshorn's testimony as to the relevance of the information as he it explained to Shepherd, and as further documented by his testimony at the hearing, reveals that the Union has established the relevancy of the requested information. Moreover, a review of the individual contracting out notifications supplied by Ormet Primary reveals that the information supplied by Ormet Primary does not answer the questions raised by the Union's information requests or at best only partially answers the questions posed. For instance, the contracting out notification entitled "Replace and Repair Casting Cylinder" states as the reason for contracting, "This work involves heavy rigging and must be performed by a contractor with experience and equipment to complete the work in a safe and efficient manner." This conclusionary statement does not reveal whether consideration was given for the use of unit employees for some or all of the work, or specify the special skills or equipment that the Respondent asserts were needed to complete the work. The reason given for the contracting out of the renovation of Cast House Dross Room was that, "This is a major upgrade that exceeds the scope of normal plant maintenance work." This response is repeated in several of the contracting out notifications but provides the Union with even less information. Moreover, none of the contracting out notifications specify the crafts involved or the anticipated use of bargaining unit members during the time period the work was to be performed. Respondent contends that the information provided in contracting out notification 98–7, stating that "Plant Maintenance will be performing locking out of the overhead cranes, installing rail stops and any electrical lockouts necessary," is responsive to item 1 of the requested information. However, this is only partially responsive in that it does not explain whether consideration was given for unit personnel to perform any of the work that was actually contracted out. Accordingly, I find that the General Counsel has met his burden of establishing the relevancy of the requested information and that the information has not been provided to the Union.

In *American Broadcasting Co.,* 290 NLRB 86, 88 (1988), the Board majority held as follows:

> A union . . . may contractually relinquish a statutory bargaining right if the relinquishment is expressed in clear and unmistakable terms. *Metropolitan Edison Co. v. NLRB,* 460 U.S. 693 (1983); *Clinchfield Coal Co.,* 275 NLRB 1384 (1985); *Timken Roller Bearing Co.,* 138 NLRB 15, 16 (1962). [In *Proctor & Gamble Mfg. Co. v. NLRB,* 603 F.2d 1310, 1318 (8th Cir. 1979), the Court stated that for there to be a waiver, "there must be a conscious relinquishment by the Union, clearly intended and expressed to give up the right."] In *United Technologies Corp*., 274 *NLRB* 504 at 507 (1985), the Board noted with approval the following language of the court in *Chesapeake & Potomac Telephone Co. v. NLRB*, 687 F.2d 633, 636 (2d Cir. 1982), enfg. 259 NLRB 225 (1981):
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> > [N]ational labor policy disfavors waivers of statutory right by a union and thus a union's intention to waive a right must be clear before a claim of waiver can succeed. Waivers can occur in any of three ways: by express provision in the collective-bargaining agreement, by the conduct of the parties (including past practices, bargaining history, and action or inaction), or by a combination of the two. The language of a collective bargaining agreement will effectuate a waiver only it is "clear and unmistakable" in waiving the statutory right. [Citation omitted.]

The Board has repeatedly found that although a contract provides for a specific type of information request, such a provision does not constitute a waiver of a union's more general

right under the Act to receive relevant information. *King Broadcasting Co.,* 324 NLRB 332, 337 (1997); *Postal Service,* 308 NLRB 358, 359 (1992); and *Wilson & Sons Heating,* 302 NLRB 802, 805 (1991). Here, the Union, by its request for information items 1, 3, 13, and 14, has requested information beyond that set forth in the collective-bargaining agreement.

In the present case, the Respondent, aside from asserting that prior contracting out language was less explicit, put forth no evidence concerning the bargaining history leading up to the contract provisions upon which Respondent's waiver defense relies. Moreover, Driscoll's actions do not support Respondent's contentions that there was a contractual waiver.[9] In his letter to Cochran dated August 11, 1998, Driscoll objected to the format of the Union's information requests referring to them as canned questionnaires, but he stated that the Respondent would respond to any legitimate information request for relevant data relating to contracting out. It is specifically stated in the letter, "For the record, again our 'position' is that we will comply with Article XXX in all respects, and we will further provide relevant information related to any specific contracting out issue." Driscoll took a similar position during his testimony, and Respondent made the same argument in its posthearing brief. It seems that Respondent's true position is that it will allow the Union only such information it wants the Union to have.

I also do not construe the parties' contracting out language as waiving the Union's access to the Board with respect to its right to obtain requested information. Article 30 provides that the contracting out notice shall "generally contain the information set forth below:" Driscoll contended, during his testimony, that each outsourcing of work was different by nature. He testified that the term "generally," as set forth in the contract, gave the Respondent license to decide which of the information listed in the contract that it would actually provide to the Union in any particular contracting out notification. The record demonstrates that the Respondent did not provide the Union with some of the information that was set forth in the contract in the contracting out notifications involved here. This information, among other items, was again requested by the Union in its form questionnaires. The information requests contained in the questionnaires that had previously been set forth in the collective-bargaining agreement include: a breakdown of the crafts, special skills, special equipment, and the anticipated use of the bargaining unit during the time that the subcontract was to be performed. I find that there exists no clear waiver of the Union's right to this information in the collective-bargaining agreement, as the usage of the term "generally" is ambiguous at best, and can be more logically construed in context to mean that at a minimum the Union was entitled to the information set forth in the contract. However, the contract also stated that should the Company failed to give notice as provided above, "a grievance relating to such matter may be initiated under the grievance procedure." Thus, there is no contractual requirement that the Union enforce its right to information through the contract alone. The later language that, "Any contracting out issue which is not mutually resolved in accordance with the foregoing procedure will be subject to the full grievance and arbitration procedure in the current labor agreement," does not require a different result. Rather, it merely affords the Union access to the arbitral forum, should it find it expedient to go that route. It does not foreclose the Union from coming to the Board to perfect its request for information. For the Board does not favor a two-tiered approach which would inevitably encumber the parties' grievance-arbitration machinery if a union were required to take its information request to arbitration, as a precursor to arbitrating its underlying subcontracting dispute. See *Pertec Computer,* 284 NLRB 810, 820 (1987); and *AK Steel Corp.,* 324 NLRB 173 (1997).

American Broadcasting Co., supra, cited by Respondent, is not controlling here. There, the Board majority determined that the union assigned whatever statutory right it might have otherwise had to certain requested information to resolution by the contractually established "HRCC" committee. The Board relied in part on the parties' bargaining history, as well as a prior arbitration decision interpreting the applicable provisions of the collective-bargaining agreement to conclude that the union had waived its right to the requested information outside of that which it was designated to receive by the "HRCC" committee. In the present case, the collective-bargaining agreement does not assign the resolution of an information dispute to a contractual committee, nor has the Respondent cited any bargaining history regarding the disputed information which would support its claims of a statutory waiver.

Respondent also contends that the standardized form requests used by Local 5724 were intended to harass and unduly burden Ormet Primary, rather than to elicit relevant and necessary information. In *AK Steel Corp.,* supra at 184, it was stated, as to a request for information, that "while the request must be made in good faith, that good-faith requirement is met if at least one reason for the demand can be justified." Here, the General Counsel has met his burden under Board law, as Hartshorn testified in a credible fashion that he reinstituted the use of the questionnaire in order to better address the large number of unresolved contracting out grievances in the parties' system and to prevent surprise by the Respondent during arbitration proceedings. Thus, the information requests were made to police the collective-bargaining agreement and to process ongoing grievances, and I do not ascribe the Union's resort to the questionnaire to any improper motive. The court's decision in *NLRB v. Wachter Construction,* 23 F.3d 1378 (8th Cir. 1994), cited by Respondent, is inapposite to facts presented here. There, the court applied a different standard than that utilized by the Board in determining good faith pertaining to information requests. However, the facts in that case are clearly distinguishable from those herein. In *Wachter,* the court noted that letters by union officials revealed that there was an improper motive as to the information request. Here, unlike in *Wachter,* Hartshorn met with Shepherd, at the latter's request, and he further explained the relevance of the requested information. Finally, Local 5724 has active grievances relating to the subcontracting further justifying its need for the requested information. I find that the information requests were not made in

[9] While the same contract language appears to apply, Respondent did not raise waiver as an affirmative defense to Local 5760's information requests in Respondent's answer to the consolidated complaint.

whole or in part to harass the Respondent, but were in fact legitimate requests to police the collective-bargaining agreement.

Finally, Respondent's objection to the questionnaire format of the information requests must be rejected. An employer may not refuse to disclose relevant requested information solely on the basis of its own internal policies or preferences regarding disclosure. *Richard Mellow Electrical Contractors Corp.,* 327 NLRB 1112 (1999); and *Bryant & Stratton Business Institute,* 321 NLRB 1007 fn. 4 (1996), enfd. 140 F.3d 169 (2d Cir. 1998). The Union has established the relevancy of the requested information, and the format of the request is not controlling.

Accordingly, I find that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to furnish Local 5724 and the International Steelworkers the information requested in its letter and attached questionnaires of August 28, 1998, pertaining to contracting out notifications 98–7, 98–8, 98–9, 98–11, 98–12, 98–16, 98–17, 98–19, and 98–23.[10]

CONCLUSIONS OF LAW

1. Ormet Mill and Ormet Primary are, and each is, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Ormet Mill and Ormet Primary are a single employer within the meaning of Section 2(2) of the Act.

3. Local 5760, Local 5724, and the Steelworkers are, and each is, a labor organization within the meaning of Section 2(5) of the Act.

4. The following units are appropriate for the purposes of collective bargaining:

> (a) All production and maintenance employees employed at Ormet Aluminum Mill Products Corporation's rolling mill facility located in Hannibal, Ohio, including all complex sniff operators, complex operators, furnace operator chargers, ingot saw operators, scrap crane operators, general utility servicemen, and cast house laborers, 80" mill operators, 96" mill operators, speed operators, assistant hot mill operators, ingot stockers, clad station operators, soaking furnace helpers, shearmen, sample utility men, power truck operators, hot mill laborers, SMS operators, cold mill operators, assistant SMS operators, utility men, assistant cold mill operators, furnace operators, expediters, cold mill feeders, material handlers, cold mill helpers and cold mill laborers, tension leveling line operators, HHS operators, TLL operators, utility men (relief), coil slitter operators, aging batch anneal furnace operators, high speed slitter assistants, set up men, coil slitter helpers, plate saw operators, embosser rewind scrap operators, stockers, overhead crane operators, plate saw helpers, finishing laborers, inspectors, stretch wrap operators, dock operators, box shop coordinators, packing clerks, metal suppliers, box shop assistants, finished goods stockers, sample coordinators, power truck operators, packers, IPS laborers, refridge and air conditioning repair employees, roll grinders, garage mechanics, industrial truck repairmen, building trades persons, roll builders, lube and coolant treatment operators, mold men, tool & storeroom attendants, battery repairmen, mobile equipment operators, checker-spot welders, shop helpers, general servicemen, maintenance laborers, those employed in trade and craft jobs (electrical repairmen, die makers, electricians, machinists, millwrights, brick masons and welders), and all laboratory department employees (laboratory analysts #1, laboratory analysts #2 and laboratory laborers), but excluding all office clerical employees and all professional employees, guards and supervisors as defined in the Act.
>
> (b) All production and maintenance employees employed at the Ormet Primary Aluminum Corporation facility in Hannibal, Ohio, including all production and maintenance employees employed in the carbon plant department, the cast house department, the electrical maintenance department, the sanitation department, the mechanical maintenance department, the rectifier department, the reduction department, and the laboratory department, but excluding all office clerical employees and all professional employees, guards and supervisors as defined in the Act.

5(a). The Steelworkers and Local 5760 are the exclusive collective-bargaining representative of the employees employed at Ormet Mill in the bargaining unit set forth in 4(a), above.

(b) The Steelworkers and Local 5724 are the exclusive collective-bargaining representative of the employees employed at Ormet Primary in the bargaining unit set forth in 4(b), above.

6. By refusing to supply the Steelworkers and Local 5760 with requested information pertaining to Ormet Mill, including information contained Local Union 5760's letters of January 9 and 10, 1997, and by refusing to supply the Steelworkers and Local 5724 with requested information pertaining to Ormet Primary, including the information requested in Local 5724's letter and attached questionnaires of August 28, 1998, pertaining to contracting out notifications 98–7, 98–8, 98–9, 98–11, 98–12, 98–16, 98–17, 98–19, and 98–23, the Respondents have violated Section 8(a)(5) and (1) of the Act.

7. The above unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

On these findings of fact and conclusions of law, and on the entire record, I make the following recommended[11]

ORDER

The Respondents, Ormet Aluminum Mill Products Corporation and Ormet Primary Aluminum Products Corporation, Hannibal, Ohio, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to supply the Steelworkers and Local 5760 with information necessary for, and relevant to, their ability to prop-

[10] While the information request relating to contracting out notification 98–23 is not alleged in the consolidated complaint, I conclude that the matter was fully litigated. In this regard, the information request was placed into evidence without objection by Respondent, and Respondent in fact mentions nine contracting out notifications in its post-hearing brief.

[11] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

erly administer their collective-bargaining agreement with the Respondent at Ormet Mill, including information requested in Local Union 5760's letters of January 9 and 10, 1997.

(b) Refusing to supply the Steelworkers and Local 5724 with information necessary for, and relevant to, their ability to properly administer their collective-bargaining agreement with the Respondent at Ormet Primary, including the information requested in Local 5724's letter and attached questionnaires of August 28, 1998, pertaining to contracting out notifications 98–7, 98–8, 98–9, 98–11, 98–12, 98–16, 98–17, 98–19, and 98–23.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish the Steelworkers and Local 5760 with requested information pertaining to Ormet Mill including the information requested in Local 5760's letters of January 9 and 10, 1997.

(b) Furnish the Steelworkers and Local 5724 with requested information pertaining to Ormet Primary including the information requested in Local 5724's letter and attached questionnaires of August 28, 1998, pertaining to contracting out notifications 98–7, 98–8, 98–9, 98–11, 98–12, 98–16, 98–17, 98–19, and 98–23.

(c) Within 14 days after service by the Region, post at its facilities in Hannibal, Ohio, copies of the attached notice marked "Appendix A" at Ormet Mill and "Appendix B" at Ormet Primary.[12] Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 2, 1997.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

[12] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."